6-22-1982

State of New York Public Employment Relations Board Decisions from June 22, 1982

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from June 22, 1982

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2A-6/22/82
SYLVAN-VERONA BEACH COMMON SCHOOL DISTRICT, Respondent,	BOARD DECISION AND ORDER
-and-	
SYLVAN-VERONA BEACH TEACHERS ASSOCIATION, Charging Party.	CASE NO. U-5539

KENNETH P. RAY AND ANTHONY J. LaFACHE, P.C. (ANTHONY J. LaFACHE, ESQ., of Counsel), for Respondent

MELINDA DOUD, for Charging Party

This matter comes to us on the exceptions of the Sylvan-Verona Beach Common School District (District) to a hearing officer's decision that it violated its duty to negotiate in good faith by repudiating an agreement with the Sylvan-Verona Beach Teachers Association (Association). The District has asserted that no agreement had been reached because of a mutual misunderstanding of the meaning of what was alleged to be an agreement.

FACTS

The District is headed by a three-member Board of Trustees and a superintendent/principal. In the instant and prior negotiations, the District was represented by the three members of its Board of Trustees. The negotiations in question extended over four sessions, the last of which took place on April 8, 1981. There were only two significant issues: whether the number of steps on the salary schedule should be increased; and what the

salary schedule should be. The Association's demands were that there be an "increase [in] the number of steps on the salary schedule" and that "each cell of the salary schedule shall be increased by 13%". The term "cell" had not been used in prior negotiations and, as explained by the Association's negotiators, it meant the various blocks that were established on the salary schedule by the intersection of the vertical columns, signifying years of service, and the horizontal rows, signifying postgraduate education credits.

Some time during the course of negotiations, the parties agreed that there would be three additional steps on the schedule, and on April 8 they agreed that there would be a 10% salary increase in each cell for the three succeeding school years.[1/]

No memorandum of understanding was signed on April 8 because of the lateness of the hour and because a social hour had been planned by the parties. It was agreed that the Association's negotiator would prepare a memorandum of understanding and submit it to the District for signature the following day. A document was prepared and submitted the following day, but it was not signed by the District at that time. Three weeks later, on May 1, 1981, the District indicated that it would not sign the memorandum. According to the Association's chief negotiator, the reason given by the District for its refusal to sign was that the beginning

---

1/ According to the Association's chief negotiator, the District had proposed a 10% increase on individual salaries and she had counterproposed an 11% increase in each cell. The parties then compromised on a 10% increase in each cell. This is consistent with the testimony of the District's chief negotiator that teachers who were to receive salary increases were also to move on the salary schedule.

salaries were too high. The District has not denied that assertion.

The Chairman of the Board of Trustees, who was its chief negotiator, testified that by May 1, he came to realize that he and the Association had a different understanding of what their agreement meant. It was his position that the District had agreed simply to a 10% increase for each teacher and that the Association believed that the salaries of teachers who advanced by seniority from one cell to the next on the salary schedule were to receive an increment in addition to the 10%, yielding for them a 13% increase.

The hearing officer concluded that the evidence established that a salary agreement had been reached for existing grades on April 8, 1981, and that the agreement called for a 10% increase in addition to increments. Accordingly, he recommended that the District be ordered to cease denying that there is an agreement on the salaries in the existing grades.[2/]

2/ The hearing officer further concluded that the negotiations had not resolved all the issues still before the parties because the evidence submitted to him did not show any agreement on the salaries to be paid to the teachers in the three new salary grades. His proposed order required the District to execute a contract containing the basic salary agreement only after the parties agreed upon the salaries for the new grades. The parties did not deal with the salaries for the new grades in their negotiations. Neither the charge nor the answer addressed this issue and the evidence in the record was not directed to it. Accordingly, we, too, do not address it. A collective bargaining agreement need not be a total agreement on all issues in dispute. There is, of course, a continuing duty to negotiate as to terms and conditions of employment still at issue. Wappinger CSD, 5 PERB ¶3074 (1972); Dissenting opinion of Chief Justice Fuld in PBA v. City of New York, 27 NY2d 410, 418 (1971); Franklin Hosiery Mills, Inc., 83 NLRB 276 (1949).

The Exceptions

The District's exceptions allege that the hearing officer committed errors and improprieties in the conduct of the hearing; that his findings of fact are not supported by the evidence; and that his recommended order violates statutory and constitutional law.

We have reviewed the record and find that the hearing officer made no incorrect or unfair rulings and engaged in no improper conduct.[3/]

On the merits, we find that the evidence supports the conclusions of the hearing officer. While the District's negotiators may not have understood the implications of their agreement, such a misunderstanding is not a valid basis for repudiating the agreement.[4/]

The District argues further that the agreement, if any, would not have been binding under the Taylor Law for two reasons. The first is that, contrary to the statutory definition, the agreement was not the result of the exchange of mutual promises between an employee organization and the chief executive officer of a public

---

3/ The allegation that the hearing officer acted improperly is not based upon the record. The allegation is that the hearing officer "met alone with the representatives of the charging party during a coffee break with no representatives of the respondent present." Investigating this allegation, we solicited affidavits from the parties. These revealed no impropriety on the part of the hearing officer.

4/ See Union Springs Central School Teachers Association, 6 PERB ¶3074 (1973), in which the negotiators for the teachers' association accepted the recommendation of a fact finder without having fully understood its implications. The subsequent recommendation that the Association's membership reject the agreement on that ground was determined to be improper.

employer. Here, it asserts, the exchange of promises, if any, was between the Association and the District's Trustees, its legislative body, rather than with the supervising principal, its Chief Executive Officer. This argument is not persuasive on the facts before us. The District's Chief Executive Officer acquiesced in the Trustees' assumption of his negotiation responsibilities and the Trustees acted under color of authority to negotiate an agreement on behalf of the District by holding themselves out to the Association as having that authority. The second assertion is that there could have been no binding agreement because additional funds for its implementation were not appropriated by the District's legislative body. This argument is inapplicable where, as here, the members of the legislative body were themselves the employer's negotiators. They must be deemed to have made the necessary appropriation by virtue of their agreement. They may not repudiate that agreement merely by asserting that they were acting in the capacity as negotiators and in a different one as legislators.[5/]

[5/] See Union Springs, supra. Also see City of Rochester, 7 PERB ¶3060 at p. 3101 (1974), in which we said:

> Just as employee organization negotiators must work for ratification of their agreement if ratification is required, so must employer negotiators seek approval of their agreement to the extent that approval is required, and this applies to employer negotiators who may happen to be members of the employer's legislative body.

Two other legal arguments of the District are also rejected. The District argues that the recommended remedy is illegal because it goes beyond a direction to the District to negotiate in good faith. This argument does not take cognizance of L. 1977, c. 429 which amended the Taylor Law to authorize such a remedy. Finally, the District argues that the payment of salary increases pursuant to the recommended order would constitute a gift in violation of Article 8, Section 1 of the New York State Constitution. It is well established that the payments would be made pursuant to a collectively bargained contract to which, according to the evidence, the District agreed. Accordingly, it is not an unconstitutional gift. Town of Huntington v. Associated Teachers of Huntington, Inc., 30 NY 2d 122 (1972), 5 PERB ¶7507.

NOW, THEREFORE, WE ORDER the District:

1. to cease and desist from repudiating the agreement found herein;
2. to execute a written contract in conformance with such agreement; and
3. to post the attached notice at locations normally used for communications to employees.

DATED: June 21, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees that:

The Sylvan-Verona Beach Common School District will not refuse to execute an agreement with the Sylvan-Verona Beach Teachers Association providing for a 10% salary increase in addition to longevity increments.

SYLVAN-VERONA BEACH COMMON SCHOOL DISTRICT

Dated..... **By**.....
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

7604

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-6/22/82

In the Matter of LOCAL 2055, COUNCIL 66, AFSCME Upon the Charge of Violation of Section 210.1 of the Civil Service Law.	BOARD DECISION AND ORDER CASE NO. D-0201

ROWLEY AND FORREST, P.C. (RONALD G. DUNN, ESQ., of Counsel), for Respondent

MARTIN L. BARR, ESQ. (ANTHONY CAGLIOSTRO, ESQ., of Counsel), for Charging Party

On January 15, 1981, Counsel to this Board (Charging Party)[1/] filed a charge against Local 2055, Council 66, AFSCME (Local 2055) alleging that Local 2055 caused, instigated, encouraged, condoned and engaged in a strike against Capital District Regional Off-Track Betting Corporation (OTB) between July 2 and July 6, 1979. The hearing officer recommended that the charge be dismissed on the ground that the filing of the charge was not timely, and Charging Party has filed a brief with us in which he urges the rejection of that recommendation.[2/]

There is no question but that employees of OTB in a unit represented by Local 2055 struck between July 2 and July 6, 1979. On July 26, 1979, less than three weeks after the strike was con-

[1/] The charge was brought to satisfy our own statutory duty. See CSL §210.3(c) and Rule §206.2.

[2/] Considering the possibility that we would not dismiss the charge on the ground that it was brought too late, the hearing officer considered the merits of the charge and he determined that Local 2055 did condone and participate in a strike as charged. Local 2055 has filed exceptions to that determination. As we conclude that the charge herein was not expeditiously brought, we do not consider that part of the hearing officer's decision dealing with its merits.

cluded, OTB brought a charge alleging a violation of CSL §210.1. That charge was consolidated with several improper practice charges filed by both parties. Two days of hearings were held in June 1980. OTB and Local 2055 then resolved the still outstanding negotiation dispute before the hearing was resumed. This led to the withdrawal of the improper practice charges, and in August 1980, OTB notified PERB that it would not proceed with the prosecution of the strike charge because it would be "unable to establish that respondent unions did engage in a willful defiance [of CSL §210.1]."

Five months after OTB had ceased prosecution of its charge, Charging Party filed the charge herein.

In concluding that the charge was not timely, the hearing officer determined that the language of CSL §210.3(c) is dispositive of the matter. It provides:

> [T]he chief legal officer of the government involved, or the board on its own motion, shall forthwith institute proceedings before the board to determine whether such employee organization has violated the provisions of subdivision one of this section. (emphasis supplied)

The hearing officer concluded that this language precludes the consideration of a strike charge that is not brought "as soon as possible" after Charging Party is made aware of a strike.

While we do not read CSL §210.3(c) as narrowly as the hearing officer does,[3/] we agree that it evidences a public policy that

[3/] The word "forthwith" may not impose a statutory limitation on the time when a charge may be brought. If read together with CSL §213(e), it may mean direct action which, if not taken "forthwith" can be compelled in a taxpayer action. CSL §213(e) provides:

> The failure to perform the duties required by subdivisions two and three of section two hundred ten of this chapter and by section two hundred eleven of this chapter shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules by any taxpayer, as defined in section one hundred two of this chapter. Any such taxpayer shall also have standing to institute any action described in subdivisions one and two of section one hundred two of this chapter.

strike charges will be brought with reasonable expedition. The charge herein was brought more than eighteen months after the strike.

Although §206.2(b) of our Rules of Procedure provides that Counsel to this Board and the chief legal officer of the government involved in a strike may intervene as a party when the other has brought a strike charge, we do not read this rule as requiring such intervention. Similarly, it was not necessary for Charging Party to bring a charge during the first thirteen months after the strike while OTB's strike charge was pending. The fact that Charging Party did not bring a charge on our behalf, or intervene in the original proceeding, while OTB's charge was pending was not inconsistent with the public policy that charges be brought with reasonable expedition. However, there is no showing in the record of a reasonable basis for allowing five additional months to elapse after OTB abandoned its charge until the filing of the instant charge. Without regard to the hearing officer's interpretation of the requirements of CSL §210.3(c), we find that the charge herein, which was brought to satisfy our own statutory duty, was not filed with reasonable expedition. Accordingly, we will not consider its merits.

NOW, THEREFORE, WE ORDER that the charge herein be, and it

hereby is, DISMISSED.

DATED: June 22, 1982
Albany, New York

Ida Klaus, Member

David C. Randles, Member

Board Chairman Harold R. Newman did not participate in the consideration of this case.

7818

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-6/22/82

In the Matter of	:	
PUBLIC EMPLOYEES FEDERATION, AFL-CIO,	:	
Respondent,	:	BOARD DECISION AND ORDER
-and-	:	CASE NO. U-5327
MICHAEL HARTNER,	:	
Charging Party.	:	

ARNOLD W. PROSKIN, P.C., for Respondent

MICHAEL HARTNER, pro se

This matter comes to us on the exceptions of Michael Hartner to a hearing officer's decision which dismissed his charge alleging that the Public Employees Federation, AFL-CIO (PEF) committed an improper practice as defined in §209-a.2 of the Public Employees Fair Employment Act by violating the duty owed to him to represent him fairly.

FACTS

Hartner, an employee of the New York State Department of Corrections (DOC) filed a contractual grievance against that Department and the Civil Service Department (DCS). Throughout the first three steps, the first two within DOC and the third before the Governor's Office of Employee Relations (OER), the grievance was supported by PEF. The grievance, which related to DCS having refused to appoint him to a permanent position, was denied by OER

on the basis that DCS' actions did not violate the contract. OER's decision was issued on May 20, 1980. On June 3, 1980, Hartner wrote to Peretti, PEF's Staff Director, requesting that the matter be submitted to arbitration. Briscoe, a PEF field representative, responded by letter dated June 13, 1980. He advised Hartner that he and Peretti had discussed the matter and both agreed that Hartner's grievance did not set forth a contract violation. Briscoe's letter informed Hartner that PEF would not submit the matter to arbitration and recommended that Hartner appeal DCS' action to the Civil Service Commission, whose decision, if unsatisfactory, could be challenged in court.

Hartner appealed to the Civil Service Commission. On August 7, 1980, the Civil Service Commission denied the appeal. Hartner sought to have PEF bring an Article 78 proceeding to review the decision of the Civil Service Commission. On November 11, 1980, Briscoe advised Hartner in a telephone conversation that Small, PEF's Director of Research, had concluded that the matter warranted no further attention. On November 14, 1980, Hartner discussed the matter with Small, who was persuaded that the matter was actionable. Small asked Hartner to write to Briscoe, summarizing the points discussed, so that the matter could be forwarded to PEF's counsel for action. Hartner wrote such a letter, which was forwarded to Proskin by a cover letter from Small which requested that legal proceedings be commenced. Proskin responded that legal proceedings could be commenced only

upon the instruction of PEF officials at a higher level and that Small direct his correspondence to them. This was done and Payne, PEF's Regional Director, solicited Proskin's view. In a letter dated December 2, 1980, a copy of which was sent to Hartner, Proskin replied that it was his opinion that the complaints involved matters lying within the discretion of the Civil Service Commission and, therefore, suit was not warranted. Hartner then commenced an Article 78 proceeding through private counsel. The Article 78 proceeding was settled by the appointment of Hartner to an Education Supervisor position in DOC on March 5, 1981.

HEARING OFFICER'S DECISION

Hartner's improper practice charge claimed that PEF's actions with respect to his grievance and his request to it to appeal from the decision of the Civil Service Commission violated its duty of fair representation.[1/]

The hearing officer dismissed as untimely those parts of the charge which alleged that PEF's handling of Hartner's grievance proceeding and its decision not to seek arbitration violated its

---

1/ An employee organization that fails to fairly and impartially represent an employee in the negotiating unit of which it is the representative, interferes with the rights of the employee in violation of §209-a.2 of the Act. See, e.g., Brighton Transportation Association, 10 PERB ¶3090 (1977); United Federation of Teachers (Barnett), 14 PERB ¶3017 (1981).

duty of fair representation.

With respect to PEF's handling of Hartner's request that PEF institute an Article 78 proceeding to review the decision of the Civil Service Commission, the hearing officer reasoned that because PEF was under no statutory duty to institute an Article 78 proceeding for Hartner, its duty of fair representation would be breached only if it provided the service to others and discriminated against Hartner in not providing it to him. Finding there was no evidence of discrimination, he dismissed this remaining aspect of the charge.

EXCEPTIONS

Hartner's exceptions relate to the conduct of the hearing officer: (1) the hearing officer granted a motion made on the hearing date to dismiss part of the charge as untimely without PEF having raised untimeliness as a defense in its answer and (2) the hearing officer treated some of his claims unfavorably while not addressing others.

DISCUSSION

Having reviewed the record, we affirm the decision of the hearing officer.

Section 204.1(a)(1) of PERB's Rules of Procedure authorizes the filing of improper practice charges alleging the commission of improper practices within four months of the filing of the charge. Section 204.2(a) provides that PERB's Director of Public

Employment Practices and Representation shall, at the initial stage of processing, review charges to determine whether they are timely. If he determines that they are not, said section directs that he dismiss them. Section 204.3(c)(2) provides that the answer to a charge shall set forth untimeliness as an affirmative defense. Finally, §204.7(1) authorizes a hearing officer, at a hearing, upon a motion made, or on his own initiative, to dismiss a charge as untimely if the failure of timeliness was first revealed during the hearing.

The petitioner's charge sets forth a lengthy series of events culminating within four months of the time when the charge was filed. Events set forth in the charge which occurred more than four months prior to its filing could be read as relating to events which occurred within such four month period. In fact, as set forth in the hearing officer's decision, he did consider some such events in relation to the claim that PEF violated its duty of fair representation by refusing to institute an Article 78 proceeding, which claim was dismissed on the merits. Under these circumstances, it was appropriate for the hearing officer, on the hearing date, to entertain a motion to dismiss pursuant to §204.7(1) of PERB's Rules of Procedure, by which time it became evident that the stale events relating to the processing of the grievance and refusal to take it to arbitration were being claimed to be improper practices.

As to the failure to prosecute the Article 78 proceeding, we agree with the hearing officer's conclusion that an employee organization's duty of fair representation does not include

the obligation to prosecute lawsuits on behalf of members of the unit it represents unless it has provided that service for others and it can be shown that the employee organization is discriminating against the charging party in not providing it to him. There being no evidence that PEF instituted such lawsuits on behalf of others, the hearing officer was correct in concluding that PEF did not violate its duty of fair representation by refusing to institute an Article 78 proceeding on Hartman's behalf to review the Civil Service Commission's decision.

NOW, THEREFORE, we affirm the hearing officer's decision, and WE ORDER that the charge herein be, and it hereby is, DISMISSED.

DATED: June 21, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2D-6/22/82
NEW YORK STATE PUBLIC EMPLOYEES FEDERATION, Respondent, -and- HARRY FARKAS, Charging Party.	BOARD DECISION AND ORDER
	CASE NO. U-5703

ARNOLD W. PROSKIN, P.C., for Respondent
HARRY FARKAS, pro se, for Charging Party

This matter comes to us on the exceptions of Harry Farkas to a hearing officer's decision dismissing his charge that the Public Employees Federation (PEF) improperly refused to represent him in connection with his protest of restrictions imposed upon the taking of Civil Service competitive examinations.

On July 17, 1981, the New York State Department of Civil Service (Department) announced both promotional and open competitive examinations for two positions for which Farkas was eligible, but it would not allow applicants to take both the promotional and open competitive examinations. Farkas complained about this restriction to PEF on the ground that the Department's procedure violated the "merit principle" of the State Constitution and he asked PEF to oppose the restriction. PEF notified Farkas on July 21, 1981, that it would not oppose the restriction. Its response did not refer to Farkas' constitutional argument but stated that the procedure was consistent with the Department's

published rules and regulations. It further indicated that it understood the reason for the rule.

After complaining to the Department unsuccessfully, Farkas wrote to PEF on September 3, 1981, and again asked it to oppose the Department's procedure. PEF responded on September 10 saying that it had not changed its opinion since July 21 and would not oppose the procedure.

The hearing officer dismissed the charge on the ground that PEF violated no duty of representation toward Farkas as defined by this Board and the courts. It considered his complaint promptly and informed him of its disagreement with him without delay. That disagreement did not reflect discrimination, gross negligence or irresponsibility.

Having reviewed the record and considered Farkas' arguments in support of his exceptions, we adopt the material findings of fact and the conclusions of law of the hearing officer.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, DISMISSED.

DATED: June 21, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-6/22/82

In the Matter of	
WYANDANCH UNION FREE SCHOOL DISTRICT, Respondent,	BOARD DECISION AND ORDER
-and-	CASE NO. U-5648
WYANDANCH SECRETARIES ASSOCIATION, NYEA/NEA, Charging Party.	

PACHMAN, OSHRIN & BLOCK, P.C. (ALAN D. OSHRIN, ESQ., of Counsel), for Respondent

FRANK SAYERS, for Charging Party

This matter comes to us on the exceptions of the Wyandanch Union Free School District (District) to a hearing officer's decision that it violated its duty to negotiate in good faith when it unilaterally eliminated four paid holidays for school secretaries while under an obligation to negotiate an agreement with the Wyandanch Secretaries Association, NYEA/NEA (Association) to succeed one that had expired.

The Association and the District had been parties to a three-year contract which expired on June 30, 1981. The contract specified that the unit employees would have a one-day holiday during the Christmas recess. Annexed to the contract, and expressly made a part of it, was a nonprofessional calendar

which, for 1979-80 and 1980-81, gave secretaries five days off with pay during the Christmas season.

While the parties were negotiating a contract for the 1981-82 school year, the District announced that secretaries would have to work four days during the Christmas week without receiving any additional pay for that work.

The hearing officer determined that he did not require a hearing as all the material facts were before him and he found that the District acted unilaterally in violation of its duty to negotiate in good faith. He ordered the District to give affected employees four consecutive days off with pay, the days to be chosen by the Association. He further ordered the District "to cease and desist from unilaterally altering terms and conditions of employment."

In support of its exceptions, the District argues that the hearing officer erred in failing to hold a hearing. It asserts that, if a hearing had been held, the evidence would have established three significant facts: that the District had negotiated in good faith before taking the unilateral action; that the parties' failure to reach an agreement was attributable to the Association's negotiations posture; that it was required to adopt a secretarial calendar at the time when it did. According to the District, it would thus have established all the elements necessary for a determination that it acted properly in accordance with our decisions in Wappinger, 5 PERB ¶3074 (1972) and Cohoes, 12 PERB ¶3113 (1979).

The District also argues that, even if it were found to have violated the Taylor Law, the hearing officer's recommended order would be defective in two particulars. By giving the Association the right to decide when the employees can take their vacations, the order deprives the District of an essential management responsibility. Also, the provision that it must not alter "terms and conditions of employment" should have been expressly restricted to mandatory subjects of negotiation.

We do not find any merit in the District's argument that its offer of proof would establish a right under Wappinger and Cohoes to take the action in question. Those cases hold that an employer may take unilateral action with respect to a mandatory subject of negotiation where (1) there are compelling reasons for the employer to act unilaterally at the time when it does so, (2) it had negotiated the change in good faith to the point where negotiations were deadlocked, and (3) it was willing to continue such negotiations.

Only the third of the three elements which, together, permit an employer to act unilaterally, is alleged to be present here. There is no allegation of a compelling reason for the employer to act unilaterally at the time when it did. The parties' expired agreement provided that the employer could require overtime work of unit employees at premium pay of time-and-a-half, except for work on Sundays when double-time is required. Thus, the District was not compelled to act unilaterally in order to assure itself of secretarial help during the Christmas recess; it merely had to invoke its continuing right to require overtime work.

The offer of proof also fails to show the second element of a Wappinger/Cohoes justification of unilateral action. It does not allege the exhaustion of impasse procedures which would indicate the existence of a genuine deadlock in negotiations.

Accordingly, the hearing officer did not err in denying the District's request for a hearing.

We do find merit in the District's objection to the first part of the remedial order. Inasmuch as the prior contract provides for premium pay for overtime work required by the District, the District should have been ordered to provide that premium pay rather than to permit the employees to take time off on dates to be chosen by the Association. Such a remedy was ordered in Farmingdale, 11 PERB ¶3055 (1978), when a public employer had improperly instructed employees to work on the day after Thanksgiving Day. That public employer was directed to compensate the employees at the premium rate provided by the parties' contract for overtime.

We do not agree with the District that the part of the recommended order directing it to cease and desist from unilaterally altering terms and conditions of employment was improper. As used in the statute, the words "terms and conditions of employment" clearly mean mandatory subjects of negotiation.

NOW, THEREFORE, WE ORDER the District:

1. to pay the affected unit employees for the four days that they worked during Christmas week in 1981 at the premium rate set forth in their prior agreement, plus interest thereon at the rate of three percent per annum;
2. to cease and desist from unilaterally altering terms and conditions of employment;
3. to negotiate in good faith with the Association; and
4. to post the notice in the form attached at all locations regularly used for communications with employees in the negotiating unit represented by the Association.

DATED: June 22, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify employees in the negotiating unit represented by the Wyandanch Secretaries Association, NYEA, NEA that we will:

1. pay the affected unit employees for the four days that they worked during Christmas week in 1981 at the premium rate set forth in our prior agreement, plus interest thereon at the rate of three percent per annum;

2. not unilaterally alter terms and conditions of employment;

3. negotiate in good faith with the Wyandanch Secretaries Association, NYEA/ NEA.

....Wyandanch Union Free School District.....

Dated..... **By**.....
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

7622

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
BOCES, THIRD SUPERVISORY DISTRICT, SUFFOLK COUNTY, Employer,	:	#3A- 6/22/82
-and-	:	Case No. C-2370
ALLIANCE OF SCHOOL BASED THERAPISTS AND NURSES, Petitioner,	:	
-and-	:	
BOCES #3 UNIT, CSEA, SUFFOLK EDUCATIONAL CHAPTER, Intervenor.	:	

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that

Alliance of School Based Therapists and Nurses

has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All employees in the following titles: physical therapy assistant, dental hygienist, occupational therapist, registered nurse, physical therapist, supervising physical therapist, assistant occupational therapist, supervising occupational therapist

Excluded: All other employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

Alliance of School Based Therapists and Nurses

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 21st day of June, 1982
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.3

7623